

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

BADAR KHAN SURI, :  
Petitioner, : Civil Action  
v. : No. 1:25-cv-00480-PTG-WBP  
DONALD TRUMP, : May 14, 2025  
Respondent. : 10:04 a.m.  
..... :  
..... :

TRANSCRIPT OF BOND HEARING PROCEEDINGS  
BEFORE THE HONORABLE PATRICIA TOLLIVER GILES,  
UNITED STATES DISTRICT COURT JUDGE

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**MORNING SESSION, MAY 14, 2025**

2 (10:04 a.m.)

THE COURTROOM CLERK: The Court calls *Badar Khan Suri* versus *Donald Trump, et al.*, Case Number 1:25-cv-480.

5 May I have appearances, please, first for the Petitioner?

MS. GREGG: Good morning, Your Honor. Sophia Gregg from the ACLU of Virginia on behalf of Petitioner. I'm here with Eden Heilman, Astha Sharma Pokharel, Hassan Ahmad, Naureen Arastu, Geri Greenspan, Vishal AgraHarkar, and Celine Zhu.

10 THE COURT: Good morning to all of you.

11 MS. SPAVINS: Good morning, Your Honor. Elizabeth  
12 Spavins, Assistant United States Attorney. With me at counsel's  
13 table is my colleague, Christian Cooper, and then presenting for  
14 the Respondents today will be David Byerley of the Office of  
15 Immigration Litigation at Main Justice, and next to him is Tom  
16 Scott-Sharoni, also from OIL. Thank you.

17 THE COURT: Good morning to all of you. So, we are on  
18 today on Petitioner's pending motions, the motion for return, as  
19 well as the motion for bail.

20 MS. GREGG: That's correct, Your Honor.

21 | THE COURT: So I'll hear from you first.

22 MS. GREGG: Yes, Your Honor. If there's no preliminary  
23 matters, we'll start with our motion for bail.

24 We're here today because Dr. Khan Suri is being unlawfully  
25 detained for his wife -- his and his wife's lawful expression in

1 support of Palestinian rights and his ties through their marriage  
2 to her father.

3           About two months ago, after celebrating Ramadan with his  
4 Georgetown community, Dr. Khan Suri came home to armed masked men  
5 who handcuffed him and drove him away from his wife, children,  
6 and the life he had. He is now over a thousand miles away from  
7 his home, the people he cherishes most, his lawyers, and this  
8 court, packed into an overcrowded detention center and subjected  
9 to the most severe restrictions usually reserved for people  
10 convicted of violent crimes awaiting deportation.

11           The impact of the unlawful actions on Dr. Khan Suri and on  
12 the millions of lawful residents, students, professors, and visa  
13 holders of all kinds is hard to overstate. Their speech isn't  
14 just chilled. They are afraid. They are afraid to exercise  
15 their core constitutional rights to write an op-ed, to post on  
16 social media, and to dare to criticize the government.

17           This fear is profound. And what is shocking is that the  
18 government doesn't deny it. The government announced it would do  
19 this in advance, and they have doubled down at every opportunity,  
20 and they've had ample opportunity to respond to Dr. Khan Suri's  
21 claims in this case before this hearing.

22           In response that he is being imprisoned and retaliated  
23 against for speech, the government says nothing. In response to  
24 the claim that the government targeted Dr. Khan Suri because of  
25 his wife's speech, her Palestinian origin, or family ties, the

1 government says nothing.

2 In response to the claim that the government targeted  
3 Dr. Khan Suri because of his wife -- I'm sorry. The government  
4 does not claim that Dr. Khan Suri was imprisoned due to any  
5 illegal conduct or for any other constitutionally sound basis.

6 We're asking this Court to release Dr. Khan Suri pending  
7 his habeas petition, after which this Court can fully examine the  
8 constitutional violations of the government's actions.

9 THE COURT: Do we even know the exact statements that are  
10 at issue? Have they identified the alleged statements that he  
11 made?

12 MS. GREGG: The government has not put forth any evidence  
13 so far in this case regarding any statements or any other reason  
14 for his detention.

15 THE COURT: Okay.

16 MS. GREGG: Courts considering bond pending immigration  
17 habeas petitions use the *Mapp* -- use the *Mapp v. Reno* standard,  
18 which requires a court to evaluate two things: Whether or not  
19 there are substantial claims in the case and whether or not there  
20 are extraordinary circumstances. There are both here.

21 While the government argues that Petitioner must meet a  
22 heightened standard in *Eliely*, which requires both a substantial  
23 constitutional claim upon which he has a high likelihood of  
24 success, and extraordinary circumstances, that standard is for  
25 habeas petitioners already tried and convicted by a court of law.

1           Here, Dr. Suri is being detained on unproven civil  
2 immigration charges challenging the constitutionality of his  
3 detention.

4           Release on bail here under the standard articulated in  
5 *Mapp* is reasonably similar to pretrial release in a criminal  
6 case.

7           Dr. Khan Suri brings several substantial claims, but most  
8 predominantly is the claim that he has been detained solely for  
9 the content of his speech, which must be afforded the highest  
10 protection under the First Amendment.

11           The government doesn't deny this. The government has  
12 targeted him in retaliation for exercising his right to free  
13 speech under the First Amendment. And, again, the government  
14 doesn't deny this.

15           That must be a substantial claim. Likewise, there is no  
16 evidence that the government has targeted and detained Dr. Khan  
17 Suri except in retaliation for exercising his lawful speech and  
18 associations.

19           The evidence submitted by Petitioner, namely the  
20 government's own statements, supports the fact that the  
21 government's objectives in detaining Dr. Khan Suri is punitive in  
22 purpose and violates the due process.

23           In considering exceptional circumstances, the  
24 courts consider what *Mapp* calls unusual cases. Except for the  
25 handful of current cases that we've brought to the attention of

1 the Court and the Court is aware, in nearly identical  
2 circumstances there have been no cases in which the government  
3 has used this particular provision to detain someone for lawful  
4 speech.

5 That is exceptional. What is also exceptional is the fact  
6 that there is no evidence that Dr. Khan Suri is a danger or a  
7 flight risk. The government was given ample opportunity by this  
8 Court in advance of this hearing to present any evidence in  
9 opposition to this motion for release, and it provided none.

10 Dr. Khan Suri, however, has demonstrated through an  
11 abundance of letters of support from people who know him that he  
12 is a kind, caring friend and colleague who leads with a  
13 commitment to peace.

14 He's supplemented with even more letters that pour in  
15 every day from people of the Georgetown community and people who  
16 have known him --

17 THE COURT: I've read them all.

18 MS. GREGG: Yes. If released, he would return to his home  
19 in Roslyn, Virginia where he lives with his wife and children.

20 If he's able to, his Georgetown dean and director fully  
21 support Dr. Khan Suri's return to work and teaching.

22 The director of the Alleywood Center is here today in  
23 support of Dr. Khan Suri's release as well, as are many members  
24 of his community.

25 Finally, release is necessary to make the habeas remedy

1 effective because Dr. Khan Suri's attention necessarily  
2 constitutes a continued infringement on his First Amendment and  
3 due process rights.

4 An infringement on those rights may be justified if the  
5 government had presented a legitimate case, but it has not done  
6 so.

7 In the meantime, with every passing day, his detention  
8 chills the speech of millions and millions of noncitizens who may  
9 now not exercise their First Amendment rights for fear of being  
10 whisked away to a detention center thousands of miles away from  
11 their home.

12 For these reasons and the many other reasons articulated  
13 in our motions and supplemental briefing, we ask this Court to  
14 release Dr. Khan Suri so that his habeas remedy can be effective.

15 THE COURT: One issue that they raised in their  
16 supplemental, and I don't know if it's necessary for me to reach  
17 it in order to rule today, is with regard to your void for  
18 vagueness challenge. Do you have any authority where a void for  
19 vagueness challenge has been made as to a policy or regulation?

20 MS. GREGG: Well, Your Honor, the -- I think the cases  
21 that, first, that the government cited don't necessarily say that  
22 it doesn't apply to a policy, *per se*, but here the issue is that  
23 there is not just the law that he's being charged under that is  
24 void for vagueness, but it's implementation through the executive  
25 orders themselves. That, as a whole, would -- are void because

1 the void of vagueness standard basically requires that due  
2 process make the policy or the law clearly defined.

3           And if it doesn't provide the kind of notice that will  
4 enable a person or people to understand what the conduct  
5 prohibits, it would be -- or if it would authorize or even  
6 encourage arbitrary discrimination or enforcement, as it has done  
7 here, it would -- it would not satisfy the void for vagueness  
8 standards that are articulated in the cases.

9           We don't have -- even if the Court is not inclined to  
10 consider the void for vagueness argument or claims in this case  
11 as being a substantial claim, there are many substantial claims  
12 in this case that would be sufficient for the standard under  
13 *Mapp*. It doesn't say that all the claims must be substantial so  
14 much that a substantial claim would be sufficient.

15           THE COURT: Okay. So it's your position that, either  
16 under your First Amendment claim or under your Fifth Amendment  
17 claim, either of those would be sufficient?

18           MS. GREGG: Correct, Your Honor.

19           THE COURT: Thank you.

20           MR. BYERLEY: Good morning, Your Honor.

21           THE COURT: Good morning.

22           MR. BYERLEY: As the Court's opinions have shown, ample  
23 attention has been paid to the brief, so I'm not going to repeat  
24 a lot of what's been said in the brief.

25           THE COURT: Thank you.

1                   MR. BYERLEY: But, briefly, the Court should deny the  
2 pending motions because the standards set by the *United States  
3 verus Eliely*, which is the Fourth Circuit's, granted it's  
4 unpublished, but it's the Fourth Circuit's equivalence of whether  
5 habeas release pending a determination on an ultimate habeas  
6 petition should be granted, is pretty high. It requires  
7 substantial constitutional claims on which he has a high  
8 probability of success.

9                   THE COURT: Haven't they created sustained claims, though?

10                  MR. BYERLEY: Your Honor, the Government does not believe  
11 that they have because of many of the jurisdictional bars that we  
12 talked about in our briefing, including 1252(a)(5) and (g).  
13 Those jurisdictional issues, even maybe not, perhaps, directly at  
14 issue, even in the context of determining whether *Eliely* release  
15 is appropriate, but it does present an obstacle to their claims  
16 on the merits. And then furthermore --

17                  THE COURT: How so?

18                  MR. BYERLEY: So, what Mr. Suri is challenging in his  
19 petition is the decision to institute removal proceedings against  
20 him.

21                  THE COURT: That's not what he's challenged.

22                  MR. BYERLEY: Yes, Your Honor.

23                  THE COURT: He's challenged specifically his detention and  
24 his transfer. I agree, like, there was a shift from the original  
25 petition and what we have clearly stated in the amended petition,

1 and they're clear. It's very focused. It's only -- the removal  
2 proceedings can continue. Those are separate. But what they're  
3 speaking to now, what they are challenging and the prayer for  
4 relief that they are seeking directly addresses detention,  
5 detention/transfer.

6 MR. BYERLEY: Yes, Your Honor. The government agrees that  
7 this petition challenges detention, but the decision regarding  
8 detention is inextricably bound up in the decision to institute  
9 removal proceedings in the first place.

10 So, here we have a case that's somewhat similar to AADC,  
11 the anti- -- the anti-Arabic discrimination -- I'm sorry. It's a  
12 mouthful.

13 THE COURT: That's okay.

14 MR. BYERLEY: Where they were challenging their removal --  
15 the basis of their removal proceedings. And while some of them  
16 may have been detained and some of them may not have been, what  
17 we're dealing with here is Mr. Suri's challenging his detention,  
18 which is attendant to and directly tied into the decision to  
19 institute removal proceedings in the first place.

20 THE COURT: No court -- I mean -- and this is not on  
21 you -- but the government has consistently made the same argument  
22 in several jurisdictions at this stage in similar -- similarly  
23 situated cases, and no one has adopted that reading.

24 MR. BYERLEY: So, granted, Your Honor, many of those cases  
25 are out of circuit and are not binding. At least one court did

1 find our way. That was *Taal versus Trump* out of the Northern  
2 District of New York earlier this year. But, granted, courts --  
3 there are reasonable grounds to disagree, and we understand that  
4 there are decisions disagreeing with those positions.

5                 The government disagrees with those decisions and is  
6 considering or actively pursuing appellate recourse. But,  
7 granted, yes, I acknowledge that there are other decisions that  
8 do not go our way, but what I want to emphasize here is that  
9 under *Jennings* and under *AADC*, the government disagrees with  
10 those conclusions because what it did --

11                 THE COURT: But *AADC* was -- you know, it only reaches --  
12 1252(g) only reaches three discrete actions: The decision to  
13 commence proceedings, adjudicate cases, or execute removal  
14 orders.

15                 MR. BYERLEY: Yes, Your Honor, but under 1252(a)(5) and  
16 (b)(9), what we also have is review of questions that arise in  
17 removal proceedings. Here, Mr. Suri is challenging the basis of  
18 his detention, the basis of the determination under 12.7.

19                 THE COURT: But the detention decision was made prior to  
20 the NTA, right, and removal proceedings actually initiating?

21                 MR. BYERLEY: No, Your Honor. The deportability  
22 determination was made prior to the decision to -- the issuance  
23 of the NTA, but it forms the basis of the NTA, and so they're  
24 inextricably tied up with one another such that (a)(5) and (b)(9)  
25 apply, as well as 1252(g).

1           THE COURT: But even if those were to -- you know, even  
2 with those statutes, the courts are clear that they do not  
3 preclude challenges to the extent of the government's authority.

4           MR. BYERLEY: Your Honor, I think you may be referring to  
5 *Demore versus Kim*, which held that 1226(e) did not prohibit  
6 constitutional challenges to the legislation. I don't think  
7 that --

8           THE COURT: I'm looking at *Miranda v. Garland*, the Fourth  
9 Circuit case.

10          MR. BYERLEY: I'm sorry?

11          THE COURT: Miranda --

12          MR. BYERLEY: Miranda.

13          THE COURT: -- v. Garden, the Fourth Circuit case.

14          MR. BYERLEY: Yes, Your Honor. But the government's  
15 position here is that (a) (5) and (b) (9), it applies here because  
16 he is challenging his detention, which is inextricably bound up  
17 with the 1227(a) (4) (C) determination.

18          And so the government believes that those provisions apply  
19 to bar review in this case and that the proper forum for which  
20 Dr. Suri to bring his challenges is an immigration court before  
21 an immigration judge, and then appeal to the BIA, if necessary,  
22 and then appeal to the Fourth Circuit as necessary -- or Fifth  
23 Circuit. I'm sorry.

24          THE COURT: I understand your argument. I'm not saying I  
25 agree with it, but I understand.

1 MR. BYERLEY: Yes, Your Honor.

2 THE COURT: You can move on.

3 MR. BYERLEY: So, furthermore, under the *Eliely* standard,  
4 I think, as Your Honor correctly identified, the void for  
5 vagueness challenge suffers from fatal flaws. First is that the  
6 Fourth Circuit says that the void for vagueness doctrine focuses  
7 on legislation, not policies or actions.

8 THE COURT: But I don't even have to reach that.

9 MR. BYERLEY: Yes, Your Honor, that's correct. We also  
10 agree with that proposition as well. Because, under the *Eliely*  
11 standard, it's only constitutional claims which are at issue on  
12 these sorts of motions.

13 Furthermore, the government posits that, to the extent  
14 that the Court is considering granting interim release, the Court  
15 also has to look at whether the interim release is necessary to  
16 render the habeas -- render the habeas remedy effective, to the  
17 extent the Court grants the habeas petition in his favor.

18 Over the 17 years since *Eliely* was decided, not a single  
19 court on an opposed motion has granted release pending a  
20 determination of habeas -- on a habeas petition.

21 The two cases on which Petitioners rely, *Brooks versus*  
22 *Wilson* and *Young versus Antonelli*, Eastern District of Virginia,  
23 2018; District of South Carolina, 2021, respectively; both of  
24 those decisions came on unopposed motions. And in that context,  
25 what the Court was looking at was that in each of those cases the

1       Fourth Circuit had recently adopted the petitioner's argument in  
2 terms of improper -- improperly elevated mandatory minimums.

3           And so, if the habeas would have been granted in their  
4 favor on the merits, then they would have served the full time  
5 that they wouldn't have needed to serve had the Court been able  
6 to rule on the habeas petition instantaneously. So that's not a  
7 similar situation to what we have here. The court's habeas  
8 remedy would still be effective even if --

9           THE COURT: How so?

10          MR. BYERLEY: Because the Court is -- because it's, one,  
11 again going back to the jurisdictional issues; but, two, if the  
12 Court grants the habeas petition on the merits, there's --  
13 he's -- the authority exists for his detention. It's not a  
14 similar situation in *Young* and *Brooks* where the sentence was  
15 invalid -- would have been found invalid if -- the elevated  
16 sentence would have been found invalid if the Court had -- if he  
17 had needed to await the entire resolution of the habeas  
18 proceedings.

19           But, again, bringing this back to 1252(a)(5), (b)(9), and  
20 g), he's challenging underlying decisions which are inextricably  
21 tied up with the --

22          THE COURT: I don't accept that reading. I don't think  
23 it's inextricably intertwined. I don't.

24          MR. BYERLEY: Yes, Your Honor. Well, that's the  
25 government's primary argument on this. And then, to the extent

1 that the Court is inclined to grant the motion, the government  
2 requests that the conditions set out in our supplemental briefing  
3 filed on Monday be imposed on any release that the Court may  
4 provide. And, as well, we would ask for a stay of seven days  
5 pending the government's determination on appellate recourse..

6 THE COURT: Let's go through those. In your supplemental,  
7 you indicate that the Court should treat this as -- or approach  
8 this as it does with respect to a preliminary injunction and  
9 impose a bond. That -- you rely on a Third Circuit case. You  
10 don't have any Fourth Circuit case that's done that, right?

11 MR. BYERLEY: So, Your Honor, the -- it's widely  
12 recognized, and I think, even in the recent *Ozturk* opinion from  
13 the Second Circuit, recognized that granting this sort of release  
14 early is tantamount to a preliminary injunction reviewable order,  
15 as well as there's a recent Supreme Court case, I think,  
16 recognizing that as well.

17 THE COURT: But bond in a preliminary injunction context  
18 is, you put -- you impose a bond so the person who the  
19 injunction -- who has been enjoined, that there is something in  
20 place that would make them whole if it was found out that the  
21 injunction was issued in error.

22 But here, there is nothing that would be needed,  
23 necessarily, to make the government whole, is there?

24 MR. BYERLEY: Well, there would be the cost of redetaining  
25 him. The conditions that the government proposes in our --

1 THE COURT: The cost of what?

2 MR. BYERLEY: The cost of sort of redetaining him and  
3 making a rearrest, in the event that that becomes necessary.

4 But, in any event, the Court can tailor its remedy to  
5 adequately balance the needs of both sides, and we believe that  
6 these conditions as we've suggested are reasonable, to the extent  
7 the Court is inclined to grant release on Petitioner's motion.

8 THE COURT: Many of the conditions that you would seek  
9 seem to go to a risk of flight or they would be ones that the  
10 Court would impose if there was a risk of flight. What evidence  
11 do you have that he poses a risk of flight?

12 MR. BYERLEY: So, Your Honor, these are just generic --  
13 these are just generic conditions that would be imposed by an  
14 immigration judge if -- in the event that the immigration judge  
15 was deciding this issue.

16 In terms of -- in terms of flight risk and danger to the  
17 community, those things are not in the record. But what we --  
18 what the government would say is that Secretary Rubio made this  
19 determination under 1227(a)(4)(C)(1), and so there is a  
20 consideration about whether his -- whether his presence in the  
21 community does cause potential serious foreign affairs  
22 consequences that should also be considered kind of separate and  
23 apart from flight risk and danger to the community.

24 THE COURT: That determination has never been really  
25 presented to this Court. I haven't seen that memorandum.

1                   MR. BYERLEY: Yes, Your Honor, that's correct. It's not  
2 in the record yet, and I do not believe it's been filed in the  
3 immigration court yet either at this point.

4                   THE COURT: Okay. Do you have more?

5                   MR. BYERLEY: Your Honor, no. Your Honor's reviewed the  
6 briefing. For the reasons stated in the government's briefing  
7 and also as presented here today, the Government requests that  
8 the Court deny the pending motions. Thank you.

9                   MS. GREGG: Thank you, Your Honor. As the Court already  
10 addressed, I won't go through all the issues with the  
11 government's argument as to the INA bars in this case, but it's  
12 just notable that the AADC case is speaking to one provision in  
13 the INA, and the government is using it to show that there's some  
14 bar through 1252(b)(9), which Miranda clearly says that the  
15 government does not have discretion to violate the  
16 Constitution -- its discretion to detain does not include the  
17 discretion to violate the Constitution, which is exactly what's  
18 at issue here.

19                   And, as the Court already adequately addressed, all the  
20 other cases have gone the other way, cases that are dealing  
21 specifically with students who are being targeted for their  
22 speech under the same foreign policy bar.

23                   The government brought up the case of Mr. Tall. However,  
24 Mr. Taal was not challenging his detention because he was not  
25 detained at the time that he brought his case. He was seeking an

1 injunction from being detained and, therefore, challenging the  
2 underlying immigration charges, and so we would put that forth,  
3 but all the other courts in this country that have looked at  
4 these cases and situations identical to the one here for --  
5 impacting Dr. Suri, they've all said that the INA doesn't -- no  
6 provision of the INA bars consideration of their claims.

7 We've already gone over why habeas remedy is effective,  
8 and I think that that's been sufficient, but for the *Eliely*  
9 cases, the government talks about how we've cited other -- no  
10 other case has been decided in this manner in the Fourth Circuit,  
11 and that is specifically because this type of remedy is for  
12 unusual cases. There hasn't been a situation that has risen to  
13 this level, and the government's conduct has not been so  
14 egregious as it has in this case, but that shouldn't preclude the  
15 Court from considering the same standard under *Mapp* that all the  
16 other circuits -- or that many other circuits consider to be the  
17 standard for immigration habeas cases.

18 Likewise, the government's contention that he should have  
19 conditions placed on him, if he is to be released, we think that  
20 that is inappropriate, since they have conceded that he is not a  
21 flight risk or a danger to the community.

22 We have presented ample evidence that he is neither of  
23 those things. In fact, he is a well-respected and well-loved  
24 member of his community with very strong ties to this Northern  
25 Virginia area.

1           If the Court would like further assurances, we are happy  
2 to consider any sort of location specific restrictions in the DMV  
3 area, but we would ask that the Court not subject him to any  
4 body-worn GPS because we find that is inappropriate, and the  
5 government has not presented any reason that that should be the  
6 case.

7           Additionally, Your Honor, we ask that, although -- we ask  
8 that if the government seeks a stay on any potential grant of  
9 release in Dr. Khan Suri's case, we ask that we be allowed to  
10 address that as well. We think that's not appropriate.

11           THE COURT: Well, I think you should address that now,  
12 their arguments with respect to the stay, because there's a  
13 certain -- there's a test that must be satisfied before the Court  
14 would grant a stay.

15           MS. GREGG: Right.

16           THE COURT: And the first is whether there would be  
17 a -- is whether the applicant has shown a likelihood or strong  
18 likelihood of succeeding on the merits.

19           MS. GREGG: Correct, Your Honor. And I think, by virtue  
20 of a grant on this motion, we would have shown that they do  
21 not -- they are not likely to succeed on the merits because of  
22 the substantial claims in this case.

23           We don't believe that the -- the government hasn't  
24 presented any evidence here for any lawful authority in detaining  
25 Dr. Khan Suri. We've demonstrated, on the other hand, that there

1 is evidence, sufficient evidence that his detention is currently  
2 unlawful and violates his First Amendment and Fifth Amendment  
3 rights.

4 Therefore, we would say that they would not likely succeed  
5 on the merits. They also cannot demonstrate any irreparable  
6 harm, because, again, he is neither a flight risk or danger to  
7 the community, and release will not interfere with his removal  
8 proceedings.

9 As we've laid out in other motions, his removal  
10 proceedings are remote, so even if he's in a detention center or  
11 he's out free in the world, his immigration removal proceedings  
12 are not impeded in any way.

13 He, however, will suffer irreparable harm. The separation  
14 from his family, from his community, from his studies, all  
15 suggest -- all go to show that he would suffer if he is -- if a  
16 stay was put in place. Every day that he is detained, his rights  
17 are being violated.

18 And also, his release will enable him to participate  
19 meaningfully in the rest of these proceedings.

20 A stay would preclude that and continue to harm him in  
21 that way. The third factor relates to other parties' interests.  
22 There are no other parties in this case.

23 And fourth is in public interest, and we would argue that  
24 Dr. Khan Suri's release is very much in the public interest. His  
25 continued detention would likely continue to have a chilling

1 effect on protected speech, which is squarely in the public  
2 interest because, you know, his release would signal to the rest  
3 of the country, to noncitizens, that they will not be impacted  
4 for exercising their First Amendment rights as well.

5                 The community will benefit, and those who deeply care and  
6 value him will benefit from his release as well.

7                 And for all those reasons, Your Honor, we would say that  
8 the government cannot prove any one of those factors that are  
9 required for a stay. Thank you.

10               THE COURT: Anything else from either side? I'm going to  
11 take a brief recess, and then I'm going to come back. I'll take  
12 15 minutes.

13               (Thereupon, a recess in the proceedings occurred from  
14 10:34 a.m. until 11:28 a.m.)

15               THE COURT: Okay. When there was a government's motion to  
16 dismiss, I issued a memorandum opinion. I'm not going to do that  
17 in this case. I plan on ruling from the bench.

18               In this case, Petitioner has moved for two forms of  
19 relief: One, to be returned to the Eastern District of Virginia,  
20 and two, to be released on bond pending adjudication of his  
21 habeas petition.

22               For the purposes of my ruling, I adopt the facts that I  
23 laid out in my memorandum opinion that I previously issued, and  
24 I'm first going to turn to the jurisdictional arguments raised by  
25 the Respondents before I turn to the merits of Petitioner's

1 motion.

2         And first, Respondents argue that since Petitioner is  
3 discretionarily detained under Section 1226(a) and 1226(e), that  
4 restricts judicial review because the Secretary's discretionary  
5 decisions or actions regarding the detention of alien or  
6 revocation or denial of bond or parole, that, essentially, this  
7 Court has no authority to review ICE's decision to detain the  
8 Petitioner in Texas.

9         The Supreme Court clearly stated in the case of *Demore*  
10 *versus Kim* that any provision said to bar review in habeas  
11 requires a particularly clear statement of Congressional intent,  
12 and that Section 1226(e) contains no explicit provision barring  
13 habeas review.

14         And then, in *Miranda v. Garland*, the Fourth Circuit  
15 further concluded that Section 1226(e) only forbids review of the  
16 Attorney General's actions and decisions in individual  
17 proceedings.

18         And with respect to the Petitioner's challenge to his  
19 detention, the *Miranda* court also observed that, in *Jennings v.*  
20 *Rodriguez*, the Supreme Court concluded that "the extent of the  
21 government's detention authority is not a matter of discretionary  
22 judgment, action, or decision, and is thus outside the scope of  
23 1226(e)."

24         And, indeed, many circuits have reasoned that 1226(e) does  
25 not limit habeas jurisdiction over constitutional claims or

1 questions of law or challenges to officials' statutory authority.

2 And so I find that here 1226(e) does not bar this Court's  
3 review because this Petitioner does not challenge a specific  
4 decision or action of the Attorney General regarding bond or  
5 parole, and because he raises a constitutional challenge to the  
6 secretary's authority, which is not a discretionary judgment.

7 Now, with respect to the claims that they -- or the bar  
8 that they allege exists under 1252(g), in the *AADC* case, the *Reno*  
9 *versus AADC*, the Supreme Court was clear that 1252(g) is to be  
10 narrowly construed, and it only reaches three discrete actions of  
11 the Attorney General, and that is the decision or action to  
12 commence proceedings, adjudicate cases, or to execute removal  
13 orders.

14 And, you know, there is a circuit split on whether  
15 1252(b)(9) can even apply before a final order of removal is  
16 issued, but -- and the Fourth Circuit hasn't definitively  
17 answered the question.

18 But in looking at the cases in the Fourth Circuit, it's  
19 clear that those rulings indicate that 1252(b)(9) would not bar  
20 review here, because in *Miranda*, as I just stated -- well, there,  
21 the Court found that, to the extent that it's a challenge to the  
22 government's authority, then 1252(b)(9) does not bar the Court's  
23 review. And Respondents have relied on the case of *Johnson v.*  
24 *Whitehead*. That's another Fourth Circuit case to support their  
25 position that review here would be precluded, but that case is

1 very different than the case before me, because there the  
2 Petitioner was trying to, in the habeas case, was trying to  
3 relitigate claims that he had made in his removal proceedings,  
4 and that's not the case here. The proceedings before me are  
5 totally separate from the removal proceedings.

6 And finally, I turn to their allegation of the  
7 jurisdictional bar because of 1252(a)(2)(B)(ii). That statute  
8 does not deprive this Court of jurisdiction because the statute  
9 that they point to, 1231(g), is not a specified grant of  
10 discretionary authority for the Attorney General to authorize  
11 transfers. It's just not, and that's clear when looking at the  
12 *Reno* case, which is a Fourth Circuit case, 2019.

13 And so, for these reasons, I find that there is no  
14 jurisdictional bar to the Court reaching or deciding this habeas  
15 petition, and, therefore, I turn to the merits of the  
16 Petitioner's motion, and I'm going to start with the motion for  
17 bond release.

18 And here, the parties don't agree whether or not *Mapp v.*  
19 *Reno* or *Eliely* provide the standard, and I don't think this Court  
20 definitively has to decide that because, under *Mapp*, it requires  
21 that the Petitioners raise substantial constitutional claims and  
22 that there are exceptional circumstances that exist that makes  
23 the grant of bail necessary to make the habeas remedy effective.  
24 And in *Eliely*, the standard is very similar. The only exception  
25 is that it requires the prisoner to show substantial

1 constitutional claims on which he has a high probability of  
2 success. And the reason why I say it's not necessary for the  
3 Court to reach that is because I find here that Dr. Khan Suri  
4 would meet either.

5 And I also would like to point out, I'm not entirely sure  
6 that *Eliely* does apply, because in that context it was a  
7 petitioner who had been held mandatorily after having committed a  
8 crime, and that's not the case here.

9 And so now I'm going to turn to those constitutional  
10 claims. And I don't think I need to reach all of it. Petitioner  
11 raises first a Fifth Amendment challenge to the lawfulness of his  
12 detention, the Rubio determination, and their policy.

13 And, essentially, he alleges that he's being retaliated  
14 against for his religious exercise, his speech, and for his  
15 association. Essentially, he alleges that he was targeted,  
16 apprehended, and detained in order to retaliate against him and  
17 punish him based on his or his wife's protected speech and his  
18 association with his wife and his father-in-law. And here, the  
19 First Amendment extends to noncitizens, as it makes no  
20 distinction between citizens and noncitizens.

21 Now, in order to make out a First Amendment retaliation  
22 claim, a plaintiff or petitioner must show that he has a right  
23 protected by the First Amendment; the Defendant's or Respondent's  
24 actions were motivated or substantially caused by the exercise of  
25 that right; and that the Defendant's actions caused the Plaintiff

1 some injury. Now, what's uncontested before me in this  
2 record, because I gave the government multiple opportunities to  
3 submit any type of filing to controvert these claims or to  
4 support their opposition to this motion, and they have declined.

5 And so what I have before me as uncontested is that the  
6 plaintiff made posts, and these allegations are -- these  
7 statements that I am outlining come from both the amended  
8 petition, which was verified, as well as the declaration of his  
9 wife, and that is that he made posts expressing support for the  
10 Palestinian people criticizing the death toll in Gaza, affirming  
11 international law principles, and criticizing U.S. support for  
12 Israel's support in Gaza.

13 Additionally, his wife began posting on social media about  
14 the war in Gaza, after losing family and friends in the war, and  
15 she shared information about developments in Gaza.

16 Statements expressing support for the Palestinian people  
17 criticizing the death toll in Gaza, affirming international law  
18 principles, and criticizing U.S. support do not appear to qualify  
19 as incitement, defamation, obscenity, or true threats of  
20 violence, and thus they are unlikely to fall into any exceptions  
21 for protected speech.

22 Indeed, I join several other courts that have found on  
23 similar facts that speech regarding the conflict there and  
24 opposing Israel's military campaign is likely protected political  
25 speech.

1           Thus, the Court finds that Petitioner was likely engaging  
2 in protected speech.

3           Now, with respect to his freedom of association claim that  
4 is part of his First Amendment claim, he alleges that he is being  
5 punished for his wife's Palestinian origin or speech or her  
6 father's past as an advisor in the government in Gaza.

7           The First Amendment similarly restricts the ability of the  
8 state to impose liability on an individual solely because of his  
9 association with another. That's the *Clayborne* case from the  
10 Supreme Court.

11           Courts recognize a First Amendment freedom of intimate  
12 association. That's the *Roberts versus USJCs* case, also from the  
13 Supreme Court.

14           And here, again uncontroverted, Petitioner has offered  
15 evidence that he is being retaliated against and punished for his  
16 marital relationship and his wife's familial relationship. And  
17 these concern his freedom of intimate association. Relationships  
18 such as family and marriage often want First Amendment protection  
19 because of -- because such protections safeguard the ability  
20 independently to define one's identity that is essential to any  
21 concept of liberty. That's the *Roberts* case.

22           And so I find that the Petitioner has satisfied the first  
23 element as to his freedom of association claim because  
24 Petitioner's marriage to his wife and association with her and  
25 her father is protected by the First Amendment.

1 Now, with respect to the second element, Petitioner has  
2 offered evidence sufficient for this Court to infer that  
3 Respondent's detention and apprehension of Petitioner was caused  
4 by his speech, his wife's speech, or his association with his  
5 wife and his wife's father.

6 As evidence of the respondent's retaliatory motive,  
7 Petitioner points to several statements of Respondents' or their  
8 representatives. First, he identifies statements made by  
9 Secretary of State Marco Rubio on Twitter calling student  
10 protesters Hamas supporters and indicating that "the United  
11 States should cancel the visa of every foreign national out there  
12 supporting Hamas and get them out of America."

13 Also, "We will be revoking the visas and/or green cards of  
14 Hamas supporters in America so they can be deported." These are  
15 the statements that I am quoting -- I am referencing based on the  
16 allegations in the petition. I'm not indicating that Dr. Khan  
17 Suri is a Hamas supporter. Let me be clear about that. I'm  
18 recounting the statements here.

19 There was also a statement that they referenced by  
20 President Trump, and it is, "We will terminate the visas of all  
21 those Hamas sympathizers and will get them off our college  
22 campuses, out of our cities, and get them the hell out of our  
23 country". And there was another statement. "One thing I do is,  
24 any student that protests, I throw them out of the country. You  
25 know, there are a lot of foreign students. As soon as they hear

1 that, they're going to behave."

2 Additionally, the petition, as well as the -- it's docket  
3 number 62, I believe, that was the supplemental filing by  
4 Petitioner in this case, attaches additional statements or  
5 postings made by DHS officials that specifically appear to  
6 reference Dr. Khan Suri because he's referred to as a Georgetown  
7 scholar, a Georgetown foreign exchange student.

8 I note for the record that, although officials -- and  
9 these posts, I believe, were all after the filing of this  
10 petition, and those statements were made publicly on Twitter or  
11 in other forms. There was no evidence submitted to this Court  
12 regarding statements that he made. The government did not submit  
13 any statements to this Court in this regard, but yet these  
14 statements were made out on social media.

15 So, Respondents have declined to dispute the merits of  
16 Petitioner's claims that he is being retaliated against for his  
17 speech or his association. Essentially, in the opposition, they  
18 rest on three propositions, and, one, that the challenges to  
19 Petitioner's removability are more appropriately channeled to his  
20 removal proceedings. But, as I said earlier, this habeas  
21 petition is not about the removal proceedings. Those are  
22 separate. They are not being challenged here.

23 So I reject that argument.

24 They also argue that Respondents do not have to disclose  
25 their reasons in cases concerning foreign affairs, which are

1 committed to the Secretary's discretion, and that the Secretary's  
2 determination is a facially legitimate justification for his  
3 determination and removal, and thus they are not required to show  
4 or prove anymore.

5 As I noted earlier, I haven't even received evidence of  
6 his determination because that memorandum was never submitted to  
7 this Court, although it could have been.

8 But in any event, those arguments appear to rest on the  
9 notions of deference and a presumption of regularity on the part  
10 of the executive.

11 While there are many contentions in which courts should  
12 take care to respect the prerogatives of the political branches,  
13 whatever deference may be appropriate, concerns of national  
14 security and foreign relations do not warrant abdication of the  
15 judicial role. That's the *Holder* case, *Holder v. Humanitarian*  
16 *Law Project*, another Supreme Court case from 2010.

17 So, in no case do courts simply accept without more  
18 government handwaving at deference and discretion.

19 And so, even in *Holder*, because Respondents rely on that  
20 case, too, the *Holder v. Humanitarian Law Project* case, it  
21 discusses the need for caution when faced with substitute courts  
22 substituting their judgment for those of the political branches.

23 It also stated that, even when national security and  
24 foreign relations are at stake, the Court does not defer to the  
25 government's reading of the First Amendment.

1           Also, at no point is the government relieved of any duty  
2 to adequately substantiate its determination. And even in the  
3 *Humanitarian Law Practice* case, the Court noted that, "the  
4 judgment of Congress and the executive is entitled to significant  
5 weight," but that statement alone, that concept alone does not  
6 mean that it predetermines the outcome.

7           And finally, as to the First Amendment claim, the  
8 Plaintiff or Petitioner has sufficiently demonstrated an injury  
9 in terms of his continued detention.

10          Now, moving to the Fifth Amendment claim, under the due  
11 process clause of the Fifth Amendment, "No person shall be  
12 deprived of life liberty or process without due process of law."  
13 And freedom from imprisonment, from government custody,  
14 detention, or other forms of physical restraint lies at the heart  
15 of liberty the clause protects." That's *Zadvydas*, a Supreme  
16 Court case.

17          Under *Zadvydas*, subsequent due process claims are  
18 cognizable in civil immigration cases, and detention is not  
19 designed to be punitive. That's the *Demore* case and the *AADC*  
20 case, both from the Supreme Court.

21          Now, detention is permissible to ensure the appearance of  
22 noncitizens at future immigration proceedings and preventing  
23 danger to the community, and I agree with other courts in  
24 immigration-related cases who have found the Fifth Amendment due  
25 process challenges to the detention to be substantial. Here,

1 Petitioner alleges that his detention is unjustified because it  
2 serves no lawful purpose and may be punitive. And at this time  
3 Respondents offer no other lawful purpose for Petitioner's  
4 detention, nor directly refute that Petitioner's detention is  
5 punitive.

6 In addition, Respondents have provided no other evidence  
7 of Petitioner's activities, actions, or statement regarding  
8 any -- that would consist of any Hamas propaganda or demonstrate  
9 that he has done anything in support of Hamas.

10 To the extent Petitioner's apprehension and detention is  
11 based on a chain of familial association, his marital tie to his  
12 wife, and his familial tie to her father, these actions would  
13 violate the due process clause in the Fifth Amendment as well as  
14 the First Amendment.

15 And given Petitioner's uncontroverted evidence, I find  
16 that he has shown a substantial likelihood -- or a likelihood, a  
17 high probability of prevailing on those substantial  
18 constitutional claims he has raised.

19 Now I'll turn to the second requirement, and that is the  
20 exceptional circumstances that exist that would grant -- which  
21 would make the grant of bail necessary to make the habeas remedy  
22 effective.

23 Okay. Now, considering the traditional bail factors, we  
24 look to the risk of flight or danger to society. And here,  
25 there's no evidence to suggest that Petitioner is a flight risk

1 or poses a danger to society. He is a professor at Georgetown  
2 University. He is married to an American citizen. He has three  
3 young children, all who reside in Virginia. Respondents have  
4 offered no reason to suggest that he would have any incentive to  
5 flee.

6 In addition, I received letters from many colleagues,  
7 community members, and even family written on Dr. Khan Suri's  
8 behalf, emphasizing his personal and scholarly commitments to  
9 peace and conflict resolution.

10 What those letters also evidence, though, are very strong  
11 ties to community here. And so, additionally, the Court has seen  
12 no credible evidence supporting that he is a danger to the  
13 community. He has not been accused of any crime, and he's not  
14 been convicted of any crime. No criminal record was presented to  
15 this Court or any facts from which this Court could conclude that  
16 he would be any sort of danger.

17 I also find that his release is necessary to make habeas  
18 remedy effective. It's the only remedy that could make habeas  
19 remedy effective, and that's for many reasons. One is that it  
20 would disrupt the chilling effect of retaliation for protected  
21 political speech or intimate associations, but, more importantly  
22 for him, having been confined for this amount of time for what  
23 the record before this Court is punitive reasons.

24 As the Supreme Court explained, the loss of First  
25 Amendment rights for even minimal periods of time unquestionably

1 constitutes irreparable harm.

2           And so, because I find that Petitioner has raised  
3 substantial constitutional claims for which he has a high  
4 probability of success and that extraordinary circumstances exist  
5 which make the grant of bail necessary to make the habeas remedy  
6 effective, this Court grants Petitioner's motion for bond  
7 release, and so I will deny the motion for return as moot.

8           In terms of conditions, I'm going to impose the following:  
9 And that is that he reside in the -- in Virginia; that he attend  
10 all court hearings in this case in person, unless excused by  
11 order of the Court; and that he participate in his -- the  
12 separate removal proceedings.

13           I'm not going to impose any of the other suggested  
14 conditions proposed by the government because I don't find that  
15 they are necessary in this case because they typically speak to  
16 situations where there is the concern about flight, and I just  
17 don't find that here.

18           I also do not think it is necessary to impose any bond in  
19 this case, because that's also not necessary to assure his  
20 appearance. Your exceptions are preserved.

21           Mr. Byerley, did you want to be heard separately as to  
22 your motion to stay, or did you already raise everything that you  
23 wanted to raise?

24           MR. BYERLEY: No, Your Honor. The only -- the only basis  
25 for our request for a stay is to allow the government to seek

1 appellate recourse -- to consider seeking appellate course, which  
2 involves consultation with multiple agencies, as well as OC, a  
3 process that takes time. A week to seven days is an appropriate  
4 amount of time, but the reason for that is stated in our papers.  
5 Thank you.

6 THE COURT: Okay. I understand. Okay. And so, in order  
7 to determine whether a grant of stay is appropriate, and I listed  
8 this out earlier when I gave Petitioner's counsel the opportunity  
9 to respond or to address it in advance, the first prong is  
10 whether there has been a strong showing of likelihood to succeed  
11 on the merits, and based on my ruling in regards to Petitioner's  
12 high probability of succeeding on the merits, you have not met --  
13 or the government has not met the first prong.

14 Additionally, I find that there isn't any irreparable harm  
15 here by me ordering release. In making that finding, I'm  
16 saying -- because there -- there's no showing that he's a risk of  
17 flight or danger to the community, so he will be here and  
18 available to still continue his participation in his removal  
19 proceedings, which, from what I understand, are remote anyway.

20 Third, there does not appear to be any other parties  
21 interested in the proceedings that would be injured by the stay.

22 And fourth and finally, I find that his release is in the  
23 public interest in order to disrupt the chilling effect on  
24 protected speech.

25 And so I'm going to decline to stay my ruling pending

1 appeal. Exceptions are preserved. Is there anything further?

2 MS. GREGG: Yes, Your Honor. We would just like to  
3 discuss a little bit of the logistics, since this is an oral  
4 order given.

5 THE COURT: Well, I'll have a -- I'm going to issue an  
6 order, a written order granting your motion.

7 MS. GREGG: I appreciate that, Your Honor.

8 THE COURT: Okay.

9 MS. GREGG: And I would just draw the Court's attention to  
10 issues that were presented in Ms. Ozturk's case when she was  
11 given an order that didn't specify exactly the conditions.

12 THE COURT: Okay.

13 MS. GREGG: Namely, that ICE -- there was a large lag time  
14 between the ordering of her release and her actually being  
15 released because ICE attempted to put GPS monitoring on her.

16 THE COURT: Well, I've already --

17 MS. GREGG: Outside of --

18 THE COURT: Said that I was not going to -- one of their  
19 requests here was the GPS monitoring, and I have refused that,  
20 because I said that it is not necessary here. You usually put  
21 that on when there's a flight risk, and I said there's no flight  
22 risk.

23 MS. GREGG: Of course, Your Honor. I agree with that, as  
24 well. I just wanted to make it clear that that is something that  
25 has come up in another case, and so that it -- if the Court would

1 be willing to make that explicit in the written order, in case  
2 there are any issues in Prairieland, we have an attorney there  
3 waiting for the Court's decision here.

4 THE COURT: Okay.

5 MS. GREGG: And if the Court is amenable to any other  
6 clarifications to the order, we would ask that it make clear that  
7 he cannot be redetained or that he shouldn't be redetained by ICE  
8 without giving sufficient notice to the Court and to counsel so  
9 that we can look into the basis for redetention, given that he  
10 needs to travel from Prairieland to here, which would require him  
11 to go through TSA or make a long drive. Redetention under the  
12 current environment in this country is of concern for us, as well  
13 as to the issues that -- redetention, which the government  
14 alluded to, and so we would just, you know, ask the Court --

15 THE COURT: Okay. You said could not be redetained  
16 without giving sufficient notice to the Court and counsel; 48  
17 hours?

18 MS. GREGG: Yes, Your Honor, so that we can appear before  
19 the Court and have an opportunity to hear the government's  
20 reasoning.

21 THE COURT: Okay. Anything else?

22 MS. GREGG: That's all, Your Honor.

23 THE COURT: So no -- explicitly state "no GPS monitoring,"  
24 and then include this -- you're requesting that the Court include  
25 this requirement that he not be redetained without notice to the

1 Court and counsel.

2 Mr. Byerley, do you want to be heard on these?

3 MR. BYERLEY: Your Honor, I would need to confer with my  
4 client based on the order. I don't want to say anything out of  
5 turn at this point without --

6 THE COURT: I understand that. I understand that. Okay.

7 But just know I'm going to enter this order as requested. I find  
8 that reasonable, and so I am, but -- I know you all will be  
9 taking all steps as soon as I leave the bench. So, if there's  
10 nothing -- if there's nothing further, then we are adjourned.

11 (Proceedings adjourned at 12:07 p.m.)

12

13 **C E R T I F I C A T E**

14 I, Scott L. Wallace, RDR-CRR, certify that  
15 the foregoing is a correct transcript from the record of  
16 proceedings in the above-entitled matter.

17 /s/ Scott L. Wallace

5/15/25

18 -----  
**Scott L. Wallace, RDR, CRR**  
**Official Court Reporter**

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**Date**

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